



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

FEB 25 1998

MEMORANDUM

**SUBJECT:** U.C. Berkeley Research - Attendance at CALFED Policy Meetings

**TO:** CALFED Policy Team

**FROM:** Tom Hagler, EPA

At our last CALFED Policy Team meeting, the Policy Team decided to withdraw the ongoing invitation to the U.C. Berkeley research team to observe our meetings. This decision was based in part on advice of counsel about the potential inability to maintain the confidentiality of the researchers' meeting notes, as well as related FACA concerns. Patrick Wright and Mary Schoonover volunteered to deliver this message to the research team.

After discussions with Patrick and Mary, U.C. Berkeley's Judith Innes called me to discuss ways of addressing the Policy Team's concerns without completely shutting down their research effort in mid-stream. This memorandum proposes a revised set of rules for the research team, and solicits a CALFED Policy Team decision as to whether agency staff should continue to pursue this issue with the research team.

The research team would agree to attend the CALFED Policy Team meetings under the following conditions:

- (1) The research effort must become a contractor to one or more of the CALFED agencies. This addresses the FACA concerns raised earlier.
- (2) The research project must sign a confidentiality agreement.
- (3) The research team cannot take any notes during the meeting. This eliminates the "verbatim transcript" that concerned many on the Policy Team.
- (4) The research team is willing to work with the CALFED Policy Team to decide whether it should attend all or only some of the meetings.

As a legal matter, I will caution that there is still a possibility that research team notes might still be subject to public scrutiny under either the FOIA rules or in litigation. Nevertheless, with the conditions outlined above, the agency legal team generally believes that whether we re-admit the research team is essentially a policy issue.